



**Statement of Tod Cohen
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eBay Inc.
At the Federal Trade Commission's Workshop on
"Possible Anticompetitive Efforts to
Restrict Competition on the Internet"**

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My name is Tod Cohen, and I am Associate General Counsel for Global Policy at eBay Inc. Thank you for inviting eBay to participate in this workshop on the potential negative effects that state regulations can have on the Internet. We believe that much of this regulation does far less to protect the public than to protect local companies. The net result of these regulations is not to protect consumers, but to penalize them. As a result, we applaud the fact that the Federal Trade Commission is holding this workshop to shine a light on this disturbing trend.

eBay is the world's first and largest online trading community. Founded in September 1995, eBay has become the most popular shopping site on the Internet when measured by total user minutes, according to Media Metrix. eBay brings together buyers and sellers from across the United States and around the world to facilitate the sale of goods and services by a diverse community of individuals and businesses. Last year, eBay users transacted over \$10 billion in sales.

Whether selling through a quasi-bidding process or fixed-price format, prices on eBay must be competitive not just with other online sellers, but with offline retailers as well. Similarly, retailers in the traditional "brick-and-mortar" world can no

longer base their prices merely on what their local market dictates – they must now consider the price that consumers will pay on eBay and at other Internet sites.

Such price competition is great for consumers, but troubling to entrenched merchants who have been able to set prices unfairly for years without repercussion. E-commerce forces them to face an unpleasant prospect -- competition. In order to prevent or "manage" this competition, these "middlemen" have used their allies in state and local government to apply existing laws and regulations to Internet companies in a discriminatory manner and to enact laws and regulations that treat interstate e-commerce companies differently from offline intrastate companies. They justify these new, discriminatory barriers with spurious claims that e-commerce may harm consumers. Far too often, though, these claims simply seek to mask the fact that these merchants are just trying to protect their "turf."

I. State Regulation of Auctions

One of eBay's concerns is that states will try to regulate us as an "auctioneer" or "auction house." While eBay is neither, the listings on its site are often referred to as "auctions" because of the bidding process for which eBay offers an online venue. As a result, some state regulators, and the entrenched middlemen with whom they collaborate, want to interpret state auction laws as regulating eBay and other online marketplaces that involve bidding. Recognizing that in most cases these laws cannot be interpreted in that way, they are also pushing for new laws to hobble their new Internet competition. The harm to eBay, our army of entrepreneurs, and our millions of customers could be significant.

A. Licenses

Current state auction laws generally require an auctioneer or auction house to obtain a license to conduct auctions. Obtaining such a license in all of the

states with auction laws would be cumbersome and very costly. eBay and other online marketplaces potentially could do this; but millions of individual and small business eBay sellers certainly could not. Such licensing requirements could force every online seller to obtain state licenses (even in distant states) before he or she can sell goods on eBay.

Furthermore, some state auction laws place remarkably onerous demands on potential "auctioneers." For example, to obtain an auctioneer license in Indiana, you are required to pass an exam to prove your auctioneering aptitude, but you cannot take the exam until you have completed a mandatory 80-hour course on auctioneering. The curriculum includes classes on "[b]id calling, [s]ale preparation, [and m]athematics" These arcane requirements make no sense for sellers trading goods and services over the Internet. In addition, if you apply for renewal of license in Indiana you must have taken 12 hours of continuing education including six hours on subjects like "Indiana's rules and statutes governing auctioneering," as well as six hours on topics like "Bid Calling" and, most important for Internet sales, "Public Speaking."

B. Substantive Auction Law

Beyond license requirements, more significant potential dangers arise because of substantive auction law provisions. The most onerous of those common provisions is the requirement that the auctioneer or auction house be responsible for the items being auctioned and thus liable for any misrepresentation of the items being auctioned. Such a requirement makes sense as applied to a classic auctioneer or auction house because they actually take possession of the goods that are being sold; they review the condition of the goods; they authenticate the origins of the goods; and they make sure that the auctioned goods are what is being advertised. Applying such a law to eBay does not, however, make sense; eBay does not take possession of the

goods sold on it site and does not attempt to authenticate them. To comply, traditional auctioneers charge more than four to five times the price that eBay charges sellers. In addition, traditional auctioneers charge up to 10% of the final value to buyers. In all but the most limited circumstances, eBay costs buyers nothing.

II. A Reasonable Compromise - Illinois

In late 1999, after the Illinois legislature amended the Illinois Auction Licensing Act to apply to the Internet, relevant state regulators contacted eBay to discuss the applicability of Illinois' auction laws to eBay. Earlier this year, after extensive discussions, the Illinois Office of Banks and Real Estate ("OBRE") agreed to work with us to amend the Illinois law. Instead of trying to fit a new business model into an existing regulatory structure, OBRE worked with us to craft a separate category of company that was not regulated in the same way as traditional auctions. The new bill was passed on May 23, 2002, and the governor signed it into law on August 15, 2002. Instead of a strict licensing requirement, the new law creates a simple registration scheme that ensures that individuals will be able to contact businesses like eBay if problems arise.

III. The Threat Remains

While eBay would prefer not to register in states in which it is not physically located, we understand the claims of states that they must protect their citizens. As a result, we are not here complaining about a statute like the Illinois registration act, as it does not threaten our business, our sellers, or e-commerce. We are, however, concerned about states that attempt to apply auction laws to eBay and that generally want to use state legislation and regulation to benefit their local businesses to the detriment of interstate e-commerce.

In the past year alone, several state legislatures have proposed bills that arguably would have regulated eBay and eBay's sellers. For instance in Missouri, the legislature considered a bill that potentially could have regulated online sales. The proposed bill defined auctions so broadly that it could have potentially included sales by sellers on eBay. Likewise, California and New York both proposed revisions to their current laws that were broad enough that they could arguably have applied to eBay and eBay's sellers. While these bills were defeated, they serve as examples of state proposals that could have substantially impacted e-commerce. A patchwork of inconsistent state laws regulating the Internet will hinder competitive marketplaces, such as eBay, that have flourished in this incredible medium.

For these reasons, eBay is extremely concerned about the continued interpretation and passage of state laws and regulations particularly those related to Internet auctions that treat Internet companies different than local merchants. These discriminatory laws and regulations harm consumers by negating the potential competitive benefits of e-commerce. This, in turn, causes the prices that consumers pay to be increased or to remain artificially inflated. We applaud this workshop and will continue to work with the FTC as we identify and hopefully eliminate discrimination against e-commerce.